EXHIBIT 2

09/19/2017 - Transcript Excerpts from First Deposition of Guy A. Davis

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEVADA

CUNG LE, NATHAN QUARRY, JON FITCH,)NO. 2:15-cv-01045-RFB-(PAL)
BRANDO VERA, LUIS JAVIER VAZQUEZ,)
and KYLE KINGSBURY on Behalf of)
themselves and all others)
similarly situated)
)
- vs -)
)
ZUFFA, LLC, d/b/a ULTIMATE)
FIGHTING CHAMPIONSHIP and UFC)
- - - - - - - - - - - - - - - - - - -

ORAL DEPOSITION OF GUY DAVIS, CPA, taken by and before KRISTIN N. McCUSKER, Registered Merit Reporter, Certified Realtime Reporter and Notary Public, at the offices of BERGER & MONTAGUE, 1622 Locust Street, Philadelphia, PA, on Tuesday, September 19, 2017, commencing at 10:54 a.m.

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A P P E A R A N C E S:

COHEN MILSTEIN SELLERS & TOLL, PLLC
BY: RICHARD A. KOFFMAN, ESQUIRE
1100 New York Avenue, N.W.
Suite 500 East Tower
Washington, DC 20005
Counsel for the Plaintiffs

BERGER & MONTAGUE, P.C.
BY: ERIC L. CRAMER, ESQUIRE
BY: PATRICK MADDEN, ESQUIRE
1622 Locust Street
Philadelphia, Pennsylvania 19103

Counsel for the Plaintiffs

BOIS SCHILLER FLEXNER, LLP
BY: STACEY KAMYA GRIGSBY, ESQUIRE
BY: EVAN E. NORTH, ESQUIRE
1401 New York Avenue, NW
Washington, DC 20005

Counsel for the Defendants

I N D E X

E X H I B I T S

(At this time, a document was marked for identification as Exhibit No. G. Davis-1.)

GUY DAVIS, CPA, after having been duly sworn, was examined and testified as follows:

BY MS. GRIGSBY:
Q. Good morning. Can you please state your name for the record, Mr. Davis?
A. Guy Alexander Davis.
Q. My name is Stacey Grigsby. I represent the defendant, Zuffa, LLC.
I will get the counsel to identify themselves.
MR. NORTH: My name is Evan North with Bois Schiller Flexner, also here on behalf of Zuffa.
MR. KOFFMAN: Richard Koffman with Cohen Milstein on behalf of the plaintiffs.
MR. MADDEN: Patrick Madden with Berger & Montague on behalf of

Plaintiffs.
MR. CRAMER: Eric Cramer, Berger & Montague, on behalf of Plaintiffs.
BY MS. GRIGSBY:
Q. So, Mr. Davis, do you understand you are here to testify in the case of Cung Le, et al., versus Zuffa, LLC?
A. Yes.
Q. And have you ever been deposed before?
A. Yes, I have.
Q. How many times?
A. I don't know the exact number, but I would estimate over 40.
Q. And have you ever testified at trial?
A. Yes.
Q. About how many times would you say?
A. Approximately 30.
Q. So since you've testified before, you understand that you are under oath today. Is that correct?
A. Yes.

compensation that they received directly.
Q. So these other benefits such as the association with the UFC brand for potential exposure, sponsorship opportunities outside of the Octagon, there is no entry for the value of those in the fighter compensation, is there?
MR. KOFFMAN: Object to the form.
THE WITNESS: That's correct.
BY MS. GRIGSBY:
Q. In your report of Zuffa's loans and borrowing, you discuss the portion that was distributed to the owners. Did you analyze how the remaining loan proceeds were used by Zuffa?
A. Yes.
Q. And what did you find?
A. If you look at page 21, table 5 of my expert report, we broke down the proceeds from each of the loan issuances from 2007 to 2014 and isolated what their uses were in the columns out to the right.
And so the total borrowings were

just over a billion 4. $895 million of that was refinancing. And then the balance of the -- the balance of the loan activity or the proceeds were used for -- either to draw down or borrow on a revolver, distributions to equity or acquisitions or other working capital.
Q. Do you know if any of the working capital that came from either the refinancing or the original loans ultimately was paid out in the form of compensation to fighters?
A. No, I don't.
Q. Did you allocate any of the interest associated with the borrowing to the benefits that the fighters received or the value that the fighters received?
A. No.
Q. Then why did you allocate a portion of the interest expense to the Zuffa equity holders?
A. As I mentioned before, because there's a direct link between having borrowed that $320 million and the

distribution that was made to the equity holders.
Q. If some of the working capital was then used to pay for fighter compensation, then by the same token, shouldn't part of the interest then be attributable to the value the fighters received as well?
A. There's no -- there's no link that I'm aware of between the loan proceeds and the fighter compensation.
You know, the working capital -- the working capital component of this has to do with changes in balances in accounts payable and accounts receivable. For a company that's growing, you have increased working capital requirements. So it was used for part of the management of the balance sheet and liquidity of the company.
The fighter compensation was financed by the sales of the company throughout this time period. So I don't see a link at all between the small amount of borrowings that falls over into working capital and fighter compensation that would

cause me to allocate any portion of that remaining interest to fighter compensation -- to the fighters.
Q. So the answer then is, no, you didn't allocate any of the interest to fighter --
A. I did not.
Q. -- compensation?
Then let's talk about Zuffa's financial capacity to enhance compensation to fighters. And this starts on page 32 of your report.
So in paragraph of 51, you write: From 2005 to 2016 and at all times during the class period, Zuffa had the financial wherewithal to pay its fighters substantially more than the amounts actually paid.
What do you mean by "substantially" in that sentence?
A. It could have paid the fighters a lot more than they were actually paid. When you consider the distributions that were made, the excess aviation costs and

the management fees that were paid, which are discretionary in nature, the executives and shareholders of the company could have elected not to pay those and pay the amounts to the fighters and that would have been a significant amount of money.

Q. Other than the management fees and the aviation expenses, what amount do you believe should -- could have been paid to the fighters during the class period?

A. I didn't do that analysis. I didn't quantify that amount. I just merely was opining that more money could have been paid to them.

Q. So you don't have an opinion as to how much more could have been paid to the fighters during the class period by Zuffa?

MR. KOFFMAN: Object to form. You can answer.

THE WITNESS: That's correct.

BY MS. GRIGSBY:

Q. If you were to do the calculation, how would you determine how much more Zuffa could have paid to fighters during the

class period?

A. I'd have to think about that. You know, sitting here, I'm not sure exactly how the calculation would be done. I think it would be -- it's a complicated analysis, but I'm not sure that I could articulate exactly how it would be put together.

Q. And what factors would you consider in performing this analysis of exactly how much more fighters could be paid by Zuffa?

MR. KOFFMAN: Object to form. Asked and answered.

THE WITNESS: Well, as I said, there would be -- I'm not sure I'll capture them all. But you would want to consider the cash balance that the company has at various points in time, the company's operating cash flow, its dividend policy and its borrowing capacity, and then I'm sure there's many other things that you'd want to consider as well.

And in this context, you'd

also want to consider how much money could be paid by the foreclosed competitors in a but-for world.

THE COURT REPORTER: Competitors?

THE WITNESS: In a but-for world.

BY MS. GRIGSBY:

Q. But you are not opining on whether Zuffa engaged in any anti-competitive behavior, are you?

A. No.

Q. So when you say the amount of money paid by foreclosed competitors, how would do you that analysis, the money Zuffa, you know, would be paid by foreclosed competitors?

A. I'm not sure how that analysis would be done. But any time you -- any time you are contemplating an increase in pay to the fighters, you are introducing a but-for world, which according to the economists would involve a larger MMA industry and more competitors.

So I don't -- I don't know sitting here today how you would model how large Zuffa would be in that instance or how large their competitors would be and how much they could afford to pay.

Q. In this but-for world, is it possible that some MMA fighters who fought for Zuffa would not be fighting at all, competing at all?

MR. KOFFMAN: Object to the form.

THE WITNESS: I don't have an opinion one way or another on that. I don't know.

BY MS. GRIGSBY:

Q. Is it possible in this but-for world that the compensation of certain fighters might actually decrease?

MR. KOFFMAN: Object to the form.

THE WITNESS: Because I don't know sitting here how the analysis would be done and I'm not part of the economic team that put together

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the analysis in analyzing what this but-for world would look like, I don't know how to answer that question.
BY MS. GRIGSBY:
Q. Are you offering an opinion as to whether Zuffa provided an unreasonable rate of return to its equity holders?
A. No.
Q. And are you offering an opinion that it's inappropriate for a company to run its business in a way that maximizes its return to shareholders?
A. I'm sorry. Could you repeat that again?
Q. Are you offering an opinion that it is inappropriate for a company to run its business in a way that maximizes its return to shareholders?
A. I'm not offering an opinion one way or another on that. I've not been asked to analyze that issue.
Q. Now, in the next sentence of paragraph 51, you say: Zuffa's exceptional

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revenue growth, profit margins and borrowing capacity afforded management and equity holders the ability to forego all or a portion of their discretionary distributions, excessive aviation expenses, and management fees to pay fighters more.
I think that's what you testified about earlier.
But what do you consider an exceptional revenue growth?
A. The 14.7 percent compounded annual growth rate we referred to earlier.
Q. And at what rate would it no longer be exceptional?
MR. KOFFMAN: Object to the form.
THE WITNESS: Again, I don't have a numeric threshold for those types of things. I think for a company over a 12-year period of time to grow double digits each and every year is, as I've deemed here, exceptional.
BY MS. GRIGSBY:

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Q. So what would you consider a normal growth rate for a company like Zuffa?
MR. KOFFMAN: Object to the form.
THE WITNESS: I haven't analyzed what normal growth rates are for -- in the sports industry or for this particular -- or for fight promoters. So I don't really have an opinion on that.
BY MS. GRIGSBY:
Q. Now, in the next sentence in paragraph 51, you talk about a hypothetical shift to enhanced fighter compensation. Do you see that?
A. Uh-huh.
Q. When you say a hypothetical shift in enhanced compensation, what exactly do you mean there?
A. Well, we're referring to an instance where, say, for example, they took a million dollars and didn't pay it to the shareholders as part of a distribution and they chose to pay it to the fighters.

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That's a hypothetical shift where I'm taking dollars away from the shareholders and I'm giving it to the fighters.
And the point that I'm making in this sentence is that doesn't affect your ability to honor your obligations. It doesn't -- because you are taking away distribution dollars to equity holders, it's not -- it's not like you are taking money away from a creditor where you have an obligation to that creditor. So it's not something that would cause -- there would be a risk of an inability to pay creditors.
Q. Did you calculate whether if you shifted discretionary distributions, the excessive aviation expenses and management fees into fighter compensation, whether Zuffa would have been profitable in all years during the class period or from 2015 to the present?
A. No, I didn't. Because, again, once you increase fighter compensation, you are in that but-for world. And the MMA

industry would have larger output,
according to the economists, and it would
be different. And Zuffa would be a
different company. I don't know whether it
would be larger or smaller. But -- so I
haven't done that analysis.
Q. Well, did you determine whether the hypothetical shift suggested here in paragraph 51 would have rendered Zuffa insolvent at any time from 2005 to 2016?
A. I guess that's the point of this sentence. If you take money that it's a distribution to equity holders, which I've said before did not render the company insolvent, and you chose to pay it to a fighter, thereby increasing their compensation, you are not going to change the solvency of the company at all.
So, no, I don't believe it would create an insolvency.
Q. But here, I didn't ask about borrowing. So I'm just asking about -- here, that's assuming that Zuffa borrowed, correct? Because as we discussed, there

were distributions that were made with borrowing, correct?
A. Well, not during the class period.
Q. But I asked you about 2005 to 2016.
A. I'm sorry. Could you repeat your question again? I'm not trying to be evasive. I misunderstood.
Q. So did you determine whether from 2005 to 2016, whether this hypothetical shift would have rendered Zuffa insolvent at any point?
MR. KOFFMAN: Object as asked and answered.
But you can answer.
THE WITNESS: Indirectly. Because all I'm saying here is that they could have foregone all or a portion of their distributions and shifted it to shareholders.
So because I'm saying all or a portion, there is -- you know, there's -- there's -- and you are dealing with distribution dollars to -- distribution or dividends to

shareholders, if you redirected those to the fighters, it wouldn't change the solvency of the company.
So I didn't create a schedule to evaluate the solvency. But inherent in this statement is that there would not be insolvency created by what I'm suggesting in this hypothetical shift.
BY MS. GRIGSBY:
Q. What things would you look at to determine whether a company is insolvent?
A. The value -- the fair value of its assets versus the fair value of its liabilities.
Q. Would you consider things such as negative equity?
A. That's used as a starting point for a company in determining a solvency opinion. But it is rarely, if ever, a final say in whether or not a company is solvent.
Q. Would you look at its ability to raise capital in determining solvency?

A. Not typically. It's -- it's an indirect component of a company's -- adequate capitalization or ability to pay debts. So it's, yes, something that would be relevant to one of those two tenets.
Q. Now, if Zuffa became insolvent, would it impact Zuffa's ability to obtain financing?
MR. KOFFMAN: Object to form.
THE WITNESS: Yes.
BY MS. GRIGSBY:
Q. Would it impact the terms of the financing that Zuffa was able to obtain if it became insolvent?
MR. KOFFMAN: Object to the form.
THE WITNESS: Yes.
BY MS. GRIGSBY:
Q. Did you determine whether the hypothetical shift that you referred to in paragraph 51 would impact Zuffa's enterprise value?
A. No. Because, once again, when you're -- when you're evaluating a scenario

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where the fighters are paid more money, you've introduced this but-for world wherein the MMA industry is larger, it has a higher output and there are more competitors. So in that instance, I don't know how much larger or smaller Zuffa would be in that world because I haven't done that analysis.

Q. Now, referring back to paragraph 33, you discuss how Zuffa's cumulative net income from 2005 to 2015 was insufficient to fund the distributions Zuffa paid to the original equity holders and January Capital.

If you converted those distributions to expenses, meaning fighter compensation, wouldn't that mean that Zuffa would be suffering losses during that entire time or during at least most of that time?

A. Again, as soon as you introduce a scenario where fighters are being paid more, it's unclear to me whether Zuffa is going to be a larger or smaller company. Because as the economists will tell you --

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based on what the economists are saying, it would have great -- the industry as a whole would have a greater output and there would be more competitors.

So I can't tell if you paid this additional funds to the fighters, whether Zuffa would be a much larger company or a smaller company. I don't have that analysis, and I don't have the ability to determine that sitting here today.

Q. But where in your report do you say that you are analyzing this in the but-for world?

MR. KOFFMAN: Object to the form.

THE WITNESS: I don't say that in my report. I'm responding to your question, because you've asked me how much more they could pay, and I've said I haven't opined on how much more they could.

BY MS. GRIGSBY:

Q. Well, your report, Exhibit 1, deals with how much you believe Zuffa could pay

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historically. Isn't that right? Meaning you are looking at their historical expenses, their historical distribution, the amount of historical capital, income to determine whether Zuffa could have paid more to fighters. Isn't that right?

MR. KOFFMAN: Object to the form.

THE WITNESS: Yes.

VIDEOGRAPHER: Excuse me, Counsel. We need to take a break and change tapes.

This completes Tape Number 1.

(At this time, a short break was taken.)

VIDEOGRAPHER: We're now back on the record. This commences Tape Number 2.

Please proceed.

BY MS. GRIGSBY:

Q. So before the break, we were just talking a little bit more about the hypothetical shift you mentioned in paragraph 51, which is the amount of

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enhanced fighter compensation.

Now, when you are discussing this hypothetical shift for enhanced compensation, are you talking about in a but-for world?

A. No.

Q. So when you are talking about the hypothetical shift to enhanced compensation, then are you talking about based on Zuffa's finances from 2005 to 2016 as they existed?

A. Yes. And I think it's important to note that the reason that I refer to distributions, excessive aviation and management fees in this instance as I wrote this paragraph was to rebut a possible argument on behalf of Zuffa that they couldn't afford to pay any more. So this is in rebuttal to the notion that they couldn't afford to pay any more. And clearly, that's wrong. You could take some portion of these discretionary items and pay more.

That's the extent of the analysis.

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It does use actual data, but it's there to rebut that notion. It's not there as a damage estimate or anything else. It's just I think I wanted to make it clear for the record as to why it is that statement is made.
Q. But when you say, "Forego all or a portion of their discretionary distributions, excessive aviation expenses and management fees to pay the fighters more," you didn't calculate what portion of, for example, the discretionary distributions could have been foregone in order to pay fighters more?
MR. KOFFMAN: Object to the form.
THE WITNESS: I did not.
BY MS. GRIGSBY:
Q. After this hypothetical shift, did you look at whether EBITDA would be negative for any of the years between 2015 and 2016?
MR. KOFFMAN: You mean 2005 to 2016?

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BY MS. GRIGSBY:
Q. Sorry, yes. Thank you. Yes. So let me rephrase.
After this hypothetical shift, did you look at whether EBITDA would be negative for any of the years between 2005 and 2016?
A. Again, since I didn't quantify the magnitude of the hypothetical shift -- I mean, I did not do the analysis you are suggesting there either -- it wouldn't have been -- I mean, I couldn't have done that analysis because I didn't quantify how much the hypothetical shift would be.
Q. Did you analyze at what point in this hypothetical shift between distributions, for example, and fighter compensation Zuffa's borrowing capacity would be affected from 2005 to 2016?
A. I did not analyze that.
Q. Could a company sustain a negative EBITDA indefinitely?
A. No.
Q. Is it your opinion that a thousand

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dollars paid to Zuffa's equity holders would affect Zuffa's financial condition in the same way as a thousand dollars paid in fighter compensation?
MR. KOFFMAN: Object to form.
You can answer.
THE WITNESS: I'm not sure how to answer that question. In either circumstance, the entity has parted with the thousand dollars, so its assets are less than -- by a thousand dollars.
So in one instance, it has a thousand dollars less cash, and in another instance, it has a thousand dollars more expenses. But I'm not really sure how to answer that question.
BY MS. GRIGSBY:
Q. Does a thousand dollars paid as an equity distribution affect Zuffa's enterprise value? How does it affect Zuffa's enterprise value?
A. It reduces its cash.

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Q. But a thousand dollars paid as an equity distribution, how does that affect Zuffa's enterprise value?
A. It reduces its cash. If you make a distribution to equity holders, you reduce the cash, and that would affect enterprise value.
Q. And how does a thousand dollars paid to fight -- in fighter compensation affect Zuffa's enterprise value?
A. Well, again, when you deal with paying fighters more money, in any hypothetical, I'm only cautious because of what the economists have said about the impact of paying fighters more. At the thousand-dollar level, it probably wouldn't have the effect that the economists are contemplating. But they do say that the industry would be larger and there would be competitors.
At a thousand dollars, the EBITDA would be lowered by a thousand dollars. If you paid it to the shareholders, your cash would be lowered by a thousand dollars.

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Both have an impact on enterprise value.

Q. Under the latter, which is the fighters get a thousand dollars in additional compensation, then Zuffa's valuation would actually decrease. Is that right?

A. Again, it depends on what valuation method you are using. If you are using an asset method, it wouldn't have any impact. If you are using an earnings method or a market method, it probably would.

But in the but-for world, I don't know whether Zuffa would be larger or smaller because I haven't done that analysis, and I'm not exactly sure how it would be done because of the impact on the market.

Q. Well, let's stick with outside the but-for but using what you used for your analysis. And you used EBITDA at some point, which is -- would EBITDA decrease if more were paid out in fighter compensation?

A. Yes.

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Q. Now, for valuation experts, do they usually assess the value of a company using -- do they usually adjust for management fees?

A. Sometimes.

Q. Do valuations in assessing a company usually adjust for excessive aviation expenses?

A. Yes.

Q. Would a shift of expenses from management fees and aviation, excessive aviation expenses, have an impact on Zuffa's enterprise or would it affect Zuffa's enterprise value?

A. It depends on if you are talking about the company in the hands of its current owners or in the hands of somebody else.

If it stays with the current owners and you are going to continue to pay the aviation expense, then it wouldn't have any impact whether you pay the aviation expense or you pay the fighters.

In the context of a sale, if the

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buyer -- if the buyer is not going to continue to pay those aviation expenses, the value of the enterprise may go up.

Q. But what about to a lender or somebody who is looking to invest, would the value of a company shift if there was -- the amount from aviation expenses went to fighter compensation?

A. I'm not sure. If a lender is looking at a company and it knows it's paying $9 million a year in aviation expenses and there's no plans to change that, the lender is going to assume that that aviation expense is going to continue. If the aviation expense is shifted to the fighters, then what's left to service the debt is the same number.

So I am not exactly sure how a lender would look at it. They might look at it differently from a sense that if they had to foreclose on the property and -- upon the default of the loan, they might have the ability to discontinue the aviation expenses. But, you know, that

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would be in the context of a foreclosure, and there would have to be an underlying reason for the foreclosure. And it gets very complicated.

Q. Don't lenders look at what would happen in the case that they would have to foreclose on a loan and if there's no ability to pay, how they would recover their investment?

A. Sure, sure. But, you know, when they -- they look at orderly liquidation value or they look at the value they would get upon foreclosure, which is not always equal to what a company would sell for if you sold it as a going concern.

And they consider the fact that by the time you get to a need to foreclose that other bad things have happened. So it's -- you know, it's certainly not the ideal scenario or the only scenario they look at.

They would like to look at the cash flows of the company to know what cash is going to be there to service my debt so